

THE PERSONS CASE
IN 65 MINUTES

preceded by

THE PERSONS CASE
IN 200 WORDS



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FROM A PRESENTATION
AT THE PROVINCIAL ARCHIVES OF ALBERTA
CANADA HISTORY WEEK JULY 2014

The Persons Case in 200 Words

(Five words short but what are five words among friends?)

What was it about?

Not whether a woman was a person,
but whether she was a person eligible to hold
public office.

There were two cases actually,
first in Alberta, then on the national stage.

There was a gap of six years between them.

The Alberta case concerned the appointment
of women as magistrates.
the federal case concerned the appointment
of women as senators.

The Alberta case was a credit to the young province.
The federal case was an embarrassment for the country.

The Alberta case was settled in 1921,
the federal in 1929.

The provincial case was settled
by the Supreme Court of Alberta.....
the federal in London by the highest court
of the British Empire.

The end was victory for all the women of Canada
as Alberta's Famous Five won more than they fought for.

The end was embarrassment for the political and
judicial masters of Canada,
being lectured by the Mother Country
on the proper way to interpret
the British North American Act.

In each case the lead personality was Emily Murphy.



PROLOGUE

Persons Case One - Alberta

Is a woman a person eligible to hold public office?

The question was settled in London, on October 18th 1929, in the marbled splendour of the Royal Courts of Justice.

But it was raised in Edmonton, on July first 1916, in the bricks-and-mortar of the main fire hall and police headquarters on 98th Street, a street that has disappeared beneath the Citadel Theatre and the Winspear Centre.

We don't know about janitor service in the Royal Courts of Justice but it happened here whenever the place was looking scruffy. The police held an open warrant for an amiable drifter, of no fixed abode or goal in life.

He would be sentenced to three days for vagrancy and headquarters would get a scrub from the lockup in the basement to the courtroom where Emily Murphy presided as the first woman magistrate in the British Empire.

Her first day on the job was July 1st when more exalted halls of justice closed in honour of Dominion Day. Magistrate's Court had to be in session to clear the lockup of citizens lodged there in the previous 24 hours.

No cannons boomed to mark Canada's 49th birthday – all the gunpowder had gone to war – but in Emily's court a fuse was lighted which smouldered through thirteen years and two Persons Cases – in Alberta and then on the national stage.

An objection was raised by a prominent lawyer of whom it was said: "If you're guilty you'd better get Harry Robertson."

Mr. Robertson contended that Emily was not entitled to try his client because in Canadian law a woman was not a person eligible to hold public office.

Emily did not daunt easily. She found the client guilty anyway and turned for advice to her brother, a Justice of the Supreme Court of Ontario.

She was told that Mr. Robertson was technically correct, but the technicality was largely ignored, particularly in the west.

Mr. Robertson continued to raise the objection but never appealed the conviction.

It was understood among his colleagues in the legal fraternity that he was playing a game – a game called Getting a Rise out of Emily Murphy – an adult version of “boys will be boys.”

There was another game – Getting a Rise out of Nellie McClung – but that was risky. The whimsical editor of the Calgary Eye Opener, Bob Edwards, cautioned any man “not to debate with Nellie. His head will spin for weeks.”

Talk turned to action in Calgary, in the court of Alice Jamieson, the second woman magistrate in the British Empire, appointed shortly after Emily.

Alice gave a lively lady named Lizzie Cyr six months in jail to consider her goals in life. She was defended by Mackinley Cameron, who took vigorous exception to the presence of a woman on the bench. He appealed the conviction and Persons Case One was underway.

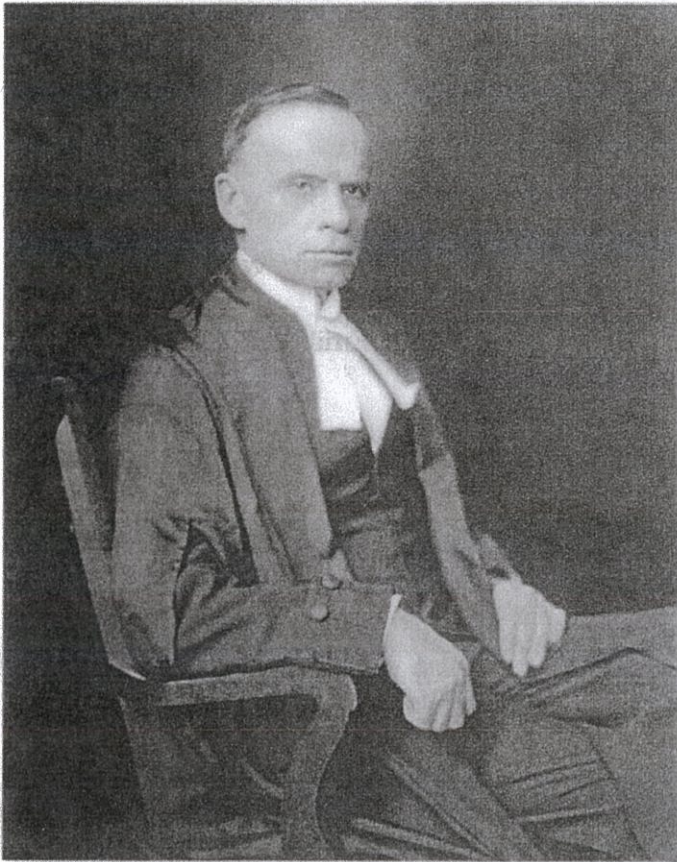
The appeal was heard by Justice David Lynch Scott, a whisky old-timer who had prosecuted Louis Riel. Mr. Cameron argued that Alberta was bound by decisions of English courts, which had ruled that “a woman is a person with regard to pains and penalties, but is not a person with regard to rights and privileges,” so Alice Jamieson had neither the right nor the privilege of sitting in judgement on Lizzie Cyr.

The old jurist was obviously uncomfortable with the whole business. He expressed serious doubt that a woman was capable of the job but he could find no law stopping it, so he reluctantly let it stand. As of 1917 Persons Case One seemed settled.

Then in 1921 the government of Alberta added an appellate division to the Supreme Court. Any dissatisfied appellant (going back to the beginning of the province) could have a second hearing.

One would think that after four years Mackinley Cameron would be resigned to Alice Jamieson’s presence on the bench, but he had only begun to fight.

The outcome was a credit to the young province of Alberta, and Justice Charles Allen Stuart who delivered the judgment.



Stuart brought unusual qualifications to the position. He was a practicing lawyer, a practicing farmer, and until his appointment, a practicing legislator, three times MLA for Sedgewick, the riding in which he worked the farm.

He dismissed Mr. Cameron's claims for the primacy of English courts with a scholarly essay which was a declaration of independence.

He showed how judges of the Victorian Age had taken away rights women had enjoyed in previous centuries. If they still believed that a woman is a person with regard to pains and penalties but not a person with regard to rights and privileges, their opinions are not binding in Alberta where we are free to recognize new and different conditions.

"If the common law rests on common sense, there can be no bar to women in the public life of Alberta."

Words to live by for the young province. As of 1921 Persons Case One was securely in the history books.

CELEBRATING A FAMOUS VICTORY

Nellie McClung, Alice Jamieson and Emily Murphy.

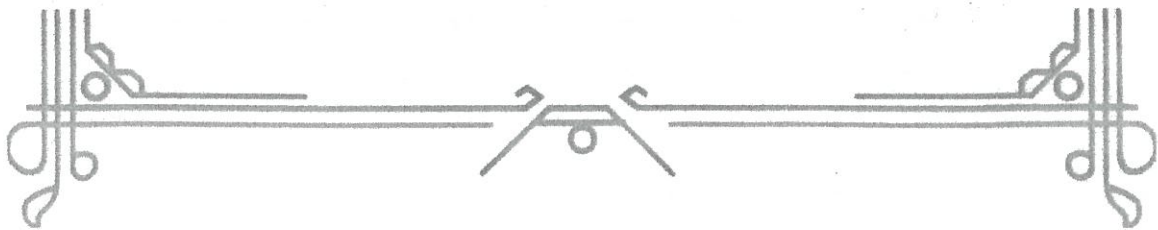
It's Spring 1916.

Men of the Alberta Legislature have given women the vote.

In Nellie's words: "We could hardly go out for a drink, so we bought new hats."

Nellie is 42, Emily 47, Alice is 58.

They don't realize their longest, hardest battle is about to begin.



The Road to Persons Case Two

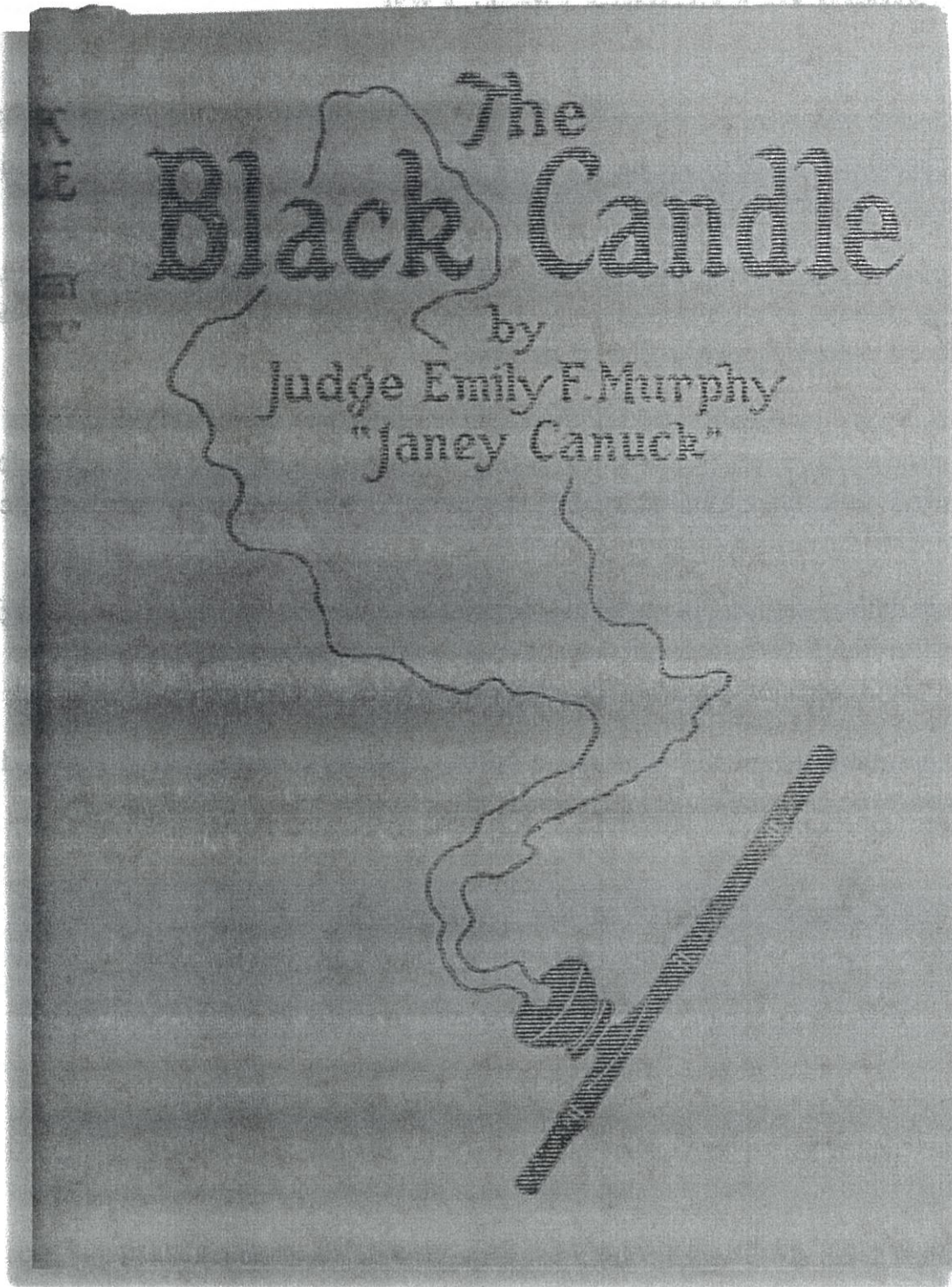
As Case One was winding down in Alberta the Federal Case was brewing in the east ... in Montreal. Women of Quebec would be barred from voting in provincial elections for another twenty years but they had a say in national affairs.

The Montreal Women's Club was saying it was time for women in the Senate, the ultimate old boys' club, whose members were appointed for life and had to show up once every two years to collect their pay.

The Act governing the Senate stated only three requirements. Members must be Canadian citizens, thirty years of age and be in possession of four thousand dollars. It was obvious to the Club that the first woman to crash the house of sober second thought would need a lot more than that.

She must have national reputation of long standing, earned in a significant highly competitive field. They decided that the first woman magistrate in the British Empire had irrefutable qualifications for the first woman senator in Canada.

The nomination came at the pinnacle of Emily's career as journalist. She had just published "The Black Candle," an expose of the drug trade in Canada.



(The "Candle" is the opium pipe on the dark orange cover.)

The investigation had its start in the courtroom above the fire hall. Emily had seen more of the grimy underside of life than most women of middle age and the middle class, but nothing had prepared her for victims of the drug trade, young mostly, frightened, in court for minor crimes seeking the price of their addictions.

She was specially moved the by the young woman begging for an injection to control her nerves. She had married an addict and become one herself. A doctor testified that her body was covered with unsightly lumps, from her husband's infected needle.

Emily was troubled. The only help she could offer this unfortunate was six drug-free months in jail. She would then resume her "descent into the living death."

The humanitarian saw a problem. The journalist saw a story. She knew little of nothing of the drug trade that was destroying the lives of people in her court because little had been written about it.

A story in need of a writer.

Edmonton police supplied the outline. The "trade" was a huge, tightly organized commercial operation. Cocaine and heroin from China and southeast Asia were smuggled through the port of Vancouver, dropped in floating bags from incoming ships, picked up by fast boats and moved to dealers across western Canada.

The scope of her enquiry expanded swiftly, from local to national to continental and the results are "The Black Candle."

The remarkable story of how she achieved it without leaving home is in the biography "Emily Murphy Crusader" produced by Byrne Hope Sanders after Emily's death.

Emily's telephone had a range of a few hundred miles. Airmail was more than a decade away. In the Murphy archives Ms. Sanders found a pile of surface mail and another pile of research on narcotics through the ages.

Emily's modus operandi was a questionnaire focused on nine aspects of the ugly business. She sent it to two thousand police chiefs, wardens, social workers, government departments and journalists in North America. Postage was two cents in Canada, three cents to the United States. The campaign cost less than sixty dollars.

Mail moved faster then. It was delivered, and picked up twice a day and if there was a batch to go in the late evening it could be put on the mail car of the midnight train to Calgary.

Her articles were appearing in Maclean's Magazine.

Through it all Emily kept in close contact with the victims. At any reasonable hour a sufferer could ring her doorbell and be shown into her study.

Again and again she heard of the terror as the drug lost its power.

From the material which Emily had never got around to publishing the biographer retrieved the one occasion on which she had to leave home.

In 1921 she went to Vancouver, to accompany police detectives on patrols of drug houses.

The experience began in a ragged wooden building known as "Shanghai Alley."

She entered with one detective in the lead and another behind for her safety. It was a place of dark narrow stairways and dim corridors. Within the only light from police flashlights. A large pass-key opened doors to dark rooms foul with the fumes of cooked opium, rooms where men lay on floors, breathing heavily with wide-open eyes that saw nothing.

She wrote: "It began to dawn on me what Bret Harte meant when he spoke of 'the dread valley of the dark shadow of THE DRUG.'"

One day she had a bizarre adventure, right off the pages of Action Comics. At age 53 she went on a chase. Police had received a tip about a spooky dealer whose face was never seen. He was known only by a hand, which emerged from a sliding panel in a certain door in a drug house.

They had a plan to catch him in the act of dealing.

They went together to the drug house, found the door along a dark hallway and gave a coded knock.

Emily watched fascinated as the panel slid back and a scrawny hand appeared.

One detective muttered an order. The hand made a fist around the money and withdrew to its hole. Minutes passed. The hand emerged with the drug.

The other detective clapped a ring of steel on what he could see of the dealer, but he was prepared for this possibility. The hand was slick with grease.

The chase was on.

The quarry got a head start down a steep stairway while the hunters were kicking in the mysterious door. Then, with Emily close behind, they pursued the sound of fast-moving feet.

The quarry had the advantage of being on home ground but eventually the sounds stopped – at the entrance to what appeared to be a storeroom.

He was either in there, or had found a secret way to the street and was still running.

A police flashlight probed the gloom and discovered a wary Oriental face.

The Black Candle was almost ready for the printers.

Meanwhile, in the nation's capital, the Montreal Women's Club was pressing Emily's appointment to the senate.

Senators are appointed by prime ministers and in the space of a year the club approached three of them: Sir Robert Borden (the man on the one hundred dollar bill) who was in the process of retiring; Arthur Meighen who wasn't around long; and Mackenzie King (the man on the fifty dollar bill) who seemed to be around forever.

All gave them the same sad story.

There was a problem, and it wasn't the English courts, it was the British North America Act. The BNA Act is Canada's constitution.

Government lawyers and other high authorities have advised them that the constitution must be viewed in light of the time in which it was passed. Since that was 1867 when women weren't eligible for public office, there would have to be an amendment to the BNA Act and that would be long and difficult.

Alas, their hands were tied.

Charles Stuart said the province of Alberta was free to recognize new and different conditions. The women were told the Dominion of Canada was not.

The case seemed to reach a dead end only inches from the start. Then a white knight came riding out of the gloom.

Senator McCoig of New Brunswick said there was an easy way around the difficulty. There was a woman in the House of Commons, Agnes MacPhail of the United Farmers of Ontario.

Agnes had been admitted to the Lower House by a simple amendment to the Dominion Elections Act. The Act applied equally to the Upper House.

He would propose the easy way when the Senate met next. He placed it on the Order paper of June 23rd 1923. Expectations ran high but he didn't rise to speak on that day or any other.

If the campaigners suspected that someone had silenced the voice of reason and it was Mackenzie King, the answer is in the National Archives. In the correspondence of Mr. King is a letter to Senator McCoig, an artful letter of the “nudge-nudge wink-wink” genre, which squelches the idea without mentioning it directly.

One of Mr. King’s nicknames was Wily Willie. He surely thought he had out-generated the ladies and they would do the proper thing and just go away.

Little did he know.

When Emily Murphy locked onto a cause she never went away. She would be out there as long as it took, and if it took five years:

So be it.

There was a popular vaudeville song: “No one has endurance like the man who sells insurance.”

Possibly the composer hadn’t heard of Emily.

One item at a time she built a file of favourable editorials, endorsements from a cross-section of organizations. Testimonials from Canadians who commanded respect, including male persons.

She kept another file – replies to her letters to the mandarins, of Ottawa explaining with condescending patience that Mr. King’s interpretation of the BNA Act was enshrined in law and not subject to public opinion.

Years passed. 1923 ... 19241925 ... 1926 ...

Then in 1927, the cause was moving, like ice on prairie rivers which spring sends downstream growing to an irresistible force.

There was a prime mover in this earth-tilting event. But Emily’s brother Bill had to be anonymous. He was Mr. Justice William Nassau Ferguson of the Supreme Court of Ontario.

Judges were expected to hold themselves above and beyond all activity that smacked of politics. He was advising Emily to get the issue out of the hands of politicians and into the courts. And showing her how to go about it.

The man who writes Downton Abbey would condense the story to a 40 second scene.

The camera would switch abruptly from a clash of temperaments in the kitchen, to an elegant salon in which Emily and Brother Bill are being confidential over exquisite tea cups.

Bill is telling her:

You must get this matter away from the politicians and into the courts.

The procedure is laid out in the British North America Act.

Section 60 says that any five citizens may ask the Supreme Court of Canada for an opinion on any section of the Act.

Section 24 deals with the Senate.

Get five friends together and ask:

“Does the word ‘person’ in Section 24 include female persons?”

(Emily intones the words)

Get five friends together.

(They clink cups.)

The scene flashes to a barn where indignant sheep are being sheared.....



Get Five Friends Together...

The Famous Five didn't just pop out of the woodwork. They had been working together for years making Alberta a kinder, gentler place.

Let's meet them at their first gathering on the road to fame.

We'll call them by their first names. That's what they did.

Friends don't call each other Murphy or McClung or McKinney or Edwards or Parlby.....

Emily Murphy

Emily is in high spirits at a fancy dress ball in costume as Thomas Moore, the Irish poet.

This is a rare smiling image. In most photo opportunities, she appears to be daring a firing squad to shoot.

Emily was a bossy lady, with an unfortunate capacity for rubbing people the wrong way and a regrettable tendency to go off the rails. (She shouldn't have nominated herself for a Nobel Prize for *The Black Candle*.)



But these human failings have obscured her intense humanity, revealed in the first cause she took up on arriving in Alberta.

It was 1907. Alberta was in its second summer, not exactly starting with a bang, but a definite boom, which would boost the population from 185,000 to 497,000 in ten years.

It was a place of fascination for the journalist known across Canada as Janey Canuck.

She wrote: “Edmonton will be a great city, but never more interesting than now. It is good to live in these first days, when the foundations of things are being laid.”

Foundations were being laid in all directions. Emily and her husband, Reverend Arthur Murphy, hitched their horse-and-buggy and went exploring along roads which existed only on survey maps, and grades of new railways ahead of the tracklayers; hearing stories of the homesteads and the raw new towns destined for great things, (in the hearts and minds of their boosters.)

Most of what they heard was optimism rewarded.

But there was a disturbing story they heard too often, of the farm wife who had worked side-by-side with her husband to wrestle a farm from the poplar woods. He had then sold the farm and departed with the proceeds, leaving his wife destitute.

There was no law to protect her. Emily wasn't going to put up with that. She would see to it that Alberta had a Dower Act—an Act to “endow” wives with property rights.

There was a problem. It was now 1909. An election was looming. All the voters were men. Two-thirds of them lived in farming areas.

No legislator hoping for re-election could afford to be identified with the Dower Act.

Premier Rutherford refused to introduce it in the house. Emily approached private members. None would touch it. Then a white knight came forward, the leader of the Opposition, member for Calgary, future Prime Minister of Canada, R.B. Bennett. The bill was rejected but a stubborn fuse was lit.

When politicians turned her down they surely thought she would do the proper thing and just go away. Little did they know. As Mr. King would discover she was “always out there.”

It took eight years, but in 1917 wives were awarded a share of property rights. It wasn't a fair share—35 percent—but the principle was established and equality was inevitable.

In the 21st century women who marry are sheltered by an act few ever hear about, the work of a person they rarely hear anything good about.

Whenever the name Emily Murphy appears in your newspaper the reporter reminds you that she was a racist. Which is interesting, because when you read what she actually wrote, you find that she was well ahead of her time in accepting difference.

Very early you find acceptance of the native people, and understanding of their way of life.

It may have been her second year in Alberta. The bands were coming to Edmonton to meet the Lieutenant Governor. She saddled her horse and rode out the Calgary Trail to meet Chief Ermineskin's people.

She rode back with them to the fair ground where Ermineskin would make the first address, bantering with the young bucks who wanted to buy her horse.

She was thinking: "He is very old, this Ermineskin. The story of his hard hazardous life was writ roughly in his face."

Different religions and languages could be sharply divisive, but you find a warm relationship with Roman Catholic nuns and clergy, most of whom were Francophone when she arrived.

Emily's third year in Alberta brought another opportunity for acceptance.

Farm folk from eastern Europe were arriving in large groups, bringing so much difference that other newcomers were bothered. The problem was that these people were not Anglo-Saxon, the self-acknowledged arbiters and exemplars of all things cultural, intellectual and behavioural.

They were Slavic.

Immigration officials hung on them the inelegant term "bohunks" a compounding of Bohemian and Hungarian, though they came from regions as far east as Russia.

The opportunity was an invitation from the Ruthenian Church at Mundare to attend a religious drama, The Finding of the Holy Cross of Jesus's Crucifixion. The

glittering domes of the Mundare church were something of a culture shock. Inside the church the ceiling glittered too.

A large globe covered with cut crystals flashed hard white sparks which hurt her eyes.

A sturdy fellow was swinging a brass censer so wide and close to her head that she was splashed with incense. The visitor had been offered a chair but the congregation were standing on the bare stone floor. And she noted with distaste that women and men were segregated “like sheep from the goats.”

She was not enjoying the experience. Then music started. Voices. Women’s voices. No organ, no director. She would write: “I am strangely, inexpressively moved by the tone-sweetness, sometimes massive, triumphant and inspiring, as though they carried swords in their upright hands... then the sullen angry rumble of thunder from distant hills with unspeakable weariness... a marvellous song in their hearts.”

The journalist known as Janey Canuck had found something in Mundare the country should know about. She called the article Communing with The Ruthebian.

While she was writing The Black Candle she offered a spirited defense of the Chinese community, a caution to reporters covering a sensational trial in Vancouver, sensational only because it involved a white woman and a Chinese man:

“Certain journalists, with all sincerity of purpose, have stirred up racial hatred. Let us punish these foreign immigrants if they deserve it and exclude them from the

country if our policy impels, but let us refrain from making them the eternal scapegoats for the sins of ourselves and of our children. That is not [our] way.”

She had a problem with inter-racial marriage but a hundred years must pass to make it a non-event. In every category she is ahead of her time. Then you come to an anomaly. Her view of the black race is consistent with her own time. Can she be declared a racist on the basis of an anomaly?

Incidentally, she didn't think much of the English, who come through as lazy, arrogant and hypocritical in a sissy kind of way.

21st century critics have another knock on Emily—and her friend Nellie McClung. They supported sterilization of the mentally incapable, which is true.

But so did Tommy Douglas. Earning an MA in sociology from McMaster University he presented a thesis based on a study of 31 families he knew in Weyburn, Saskatchewan, his last thesis before politics. It is titled: “The ^{Problem of the} Normal Family.” It can be read online and provides valuable insights into realities of a difficult time and perceptions of a difficult issue.

Tommy resolved many of these difficulties with Medicare.

Nellie McClung

Nellie McClung arrived in Alberta in 1915. The Great West Life Assurance Company transferred her husband Wes from Winnipeg to the Edmonton office just in time for Nellie to join the final push for prohibition and votes-for-women.



She came as a seasoned veteran of the suffrage campaign in Manitoba, with a reputation as a writer recently enhanced by In Times Like These, a book of essays on the status of women, and a reputation as an entertainer—on lecture platform and stage. A handbill promoting an appearance in Fort Macleod proclaimed Nellie “Canada’s greatest entertainer and oratress.”

Her finest hour as entertainer came on the 28th of January, 1914 on the stage of the Walker Theatre in Winnipeg. In the Manitoba Legislature the afternoon of January 27th, Nellie and the Provincial Equality League were to present their petition for “ballot-box-justice” to Premier Roblin.

On the possibility that there would be something to celebrate the League booked the theatre for the show, which would be a “mock parliament” of women ruling the world, with Nellie presiding.

Premier Sir Rodmond Roblin heaped scorn on that possibility. Members of the League packing the galleries were informed that he was unequivocally opposed. His wife, whom he loved, was bitterly opposed.

Female hysteria would herald the downfall of traditions of the British Empire and lead to the destruction of the home.

Servant girls would be allowed to vote and who would want that?

Women didn't want the vote anyway. When the State of Colorado offered women the franchise "they shrank from it as from a pestilence."

While the premier went on and on, raining condescension on the disappointed petitioners, Nellie's high-velocity mind was forming a plan to have the last word, the last laugh at the theatre.

As a child she had been reprimanded for mimicing her aunts. Sir Rodmond Roblin was the answer to a mimic's prayer.

As he spoke she was making notes—of the sayings of Premier Roblin—of postures and gestures which went with each one—changing tones of his voice, from the lush tone of an important man welcoming tiresome women to the Legislature, to the rising, commanding voice of an important man rejecting an opinion other than his own. By the time the ladies were dismissed Nellie had the ingredients for a rousing impersonation of the important man at the Walker Theatre, with little more than 24 hours to wrestle her notes in to a script and rehearse it to the level of performance.

This would have been a problem for others, but not Nellie.

Her strongest supporter, husband Wes McClung, was in the galleries observing the Roblin show.

The challenge became a family matter. Into the evening and the next day Wes and son Jack were aiding and abetting Nellie in justifiable identity theft.

When she came on stage at the Walker Theatre the first laughs of the night showed that the audience recognized their tormenter.

The husband of one of the Leaguers came on stage pushing a wheelbarrow... with a load of petitions from men demanding political equality with women.

In the character of the Premier, Nellie brought the house down, declaring herself unequivocally opposed. Allowing men to vote would break up the home.

Seven-eighths of the occupants of the prisons were men. Would you ask the Premier to enfranchise an army of lawbreakers?

Men would not vote anyway. They would shrink from the polls as from a pestilence.

Laugh after laugh the sayings of Sir Rodmond Roblin came back to brighten the iconic night of January 28, 1914.

The next year Nellie left for Edmonton. Sir Rodmond left politics in a scandal over construction of the new Manitoba Legislature and operated an automobile dealership.

Henrietta Muir Edwards

Henrietta Muir Edwards could have enjoyed a privileged life of ease and culture.

Member of a wealthy Montreal family she was able to travel in Europe and study art in New York and was a recognized painter noted for her miniature portraits.

But she was a devout believer, as were all the Famous Five, and believed in the Social Gospel, which was all for Social Action whenever there was a need.

Henrietta saw it in the lives of an emerging class of woman, known as “working girls”—single women living and earning on their own.

They needed a centre, where they could find companionship, free medical and legal advice, job training, an employment agency and a reading room, not only with books to borrow but newspapers and current magazines to bring them into the greater world. She persuaded her father to buy a large house for the Working Girls Society... at which she was all things, including chief fundraiser.

Working in the bustle of Canada’s largest city she could never have imagined that at age thirty-five, she would be living in Indian Head, Saskatchewan, and would spend most of her next forty years on or near prairie reserves, where her husband Doctor Oliver Edwards, was the government medical officer.



Even less could she have imagined that there would be a break—in the 1890s—when the family lived in Ottawa and Lord Aberdeen was Governor-General and the Governor's Lady was making waves, expressing opinions on women's rights, organizing the national Council of Women of Canada and founding the Victorian Order of Nurses, and Henrietta was a valued lieutenant.

The National Council wasn't about marching on Parliament Hill, it was about bridging divisions in Canadian society, bringing together French and English, Protestant and Catholic. It was a federation of local councils plus a wide variety of entities from the Girls' Friendly Society to the Women's Art Association.

Henrietta brought "something extra" to the NCWC. She had no formal legal training but as a matter of personal interest had made herself an authority on Canadian laws that affected women and children. Laws federal, provincial and municipal for the large cities, creating a database for the organization.

Members could read the trends there. What to support and what to oppose. Lady Aberdeen gave her the title: Convenor of Standing Committees on Laws, which she held for life.

When she returned to the west, to the Blood reserve at Fort Macleod with her husband and three children, she took the title with her and kept the database current by mail.

In 1908 she published Women's Rights in Canada, in 1921 Women's Rights in Alberta and in 1927, at age seventy-eight was the senior petitioner in the Persons Case, known technically as "Edwards versus The Attorney General of Canada." The alphabet gave Henrietta Muir Edwards top billing.

Louise McKinney

Louise McKinney was the first woman sworn in as a member of the Alberta Legislature, which made her simultaneously the first woman legislator in the British Empire.

She was initiated into politics in 1917, at the first opportunity for women to vote and run for office, by the Non-Partisan League, a populist group which didn't like the policies of either the Liberals or Conservatives, including their habit of accepting donations from brewers and distillers.



Passport Photo - 1923

To the surprise of all, including herself, McKinney was elected MLA for Claresholm.

Louise's son Willard was named for Frances E. Willard, founder of the Women's Christian Temperance Union. She campaigned with Emily and Nellie for Prohibition.

The Methodist church she and her husband helped build in Claresholm was often a shelter for victims of domestic violence brought on by alcohol.

Their success with the referendum showed that legislation was powerless against alcoholism.

Irene Marryat Parlby

Meet Irene (ey-ree-nee) Marryat Parlby, who came to Alberta in 1893 to visit English friends pioneer-farming at Buffalo Lake and stayed for 72 years—not with the friends, of course.

By the time of the Persons Case she was a power in the life of the province—the first cabinet minister, responsible for legislation affecting women and children and founding president of the United Farm Women of Alberta.



In her first term as president there was a move among the Farmers' Union for ladies' auxiliaries to put on the picnics and dinners and Christmas concerts. If you look at her picture you can almost hear her putting a stop to that.

“The day has fled when a woman can confine her interests within the four walls of her home. Our duties are forever pushing us into the greater world.”

Many of the newcomers arriving in Alberta were fleeing oppression in their homelands. So was Irene, which poses the question: How could a member of a family which had been upper-class since Elizabeth I was queen, who had been presented to aristocratic society with pomp and circumstance, who dwelt in great manor houses in England and Ireland, feel oppressed?

It was a life of privilege, except for the privilege of being useful.

She didn't know how to do anything. She had never washed a dress or cooked a meal—the English cooks wouldn't let her into their kitchens.

At buffalo Lake, she revelled in helping her friend in the kitchen, and in the ritual of the washtubs. But be not deceived the day has fled when a woman can confine her interests within the four walls of her home.

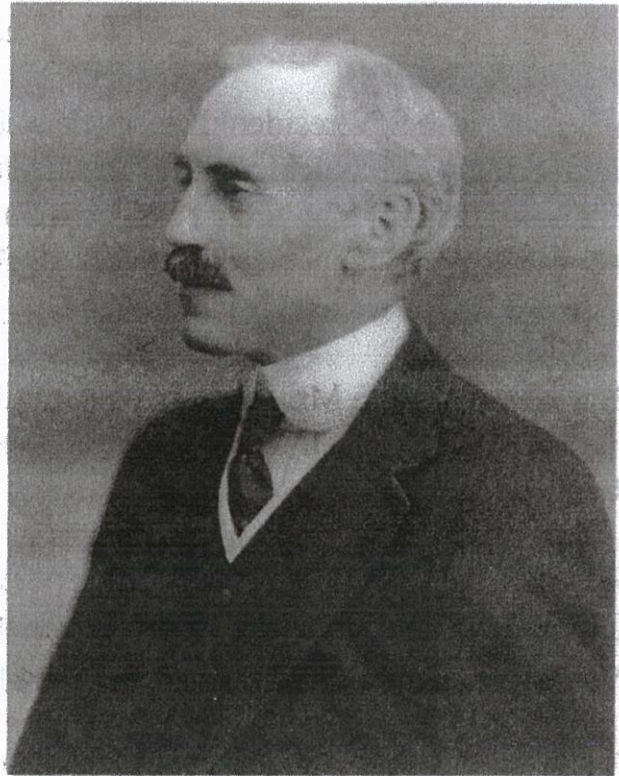
Into Court

“Away we go!” (A favourite expression of Emily Murphy when leading the charge.)

The friends had a case. Now they needed someone to present it to the Supreme Court, and by luck or by destiny they got the man Mackenzie King called the ablest man in Canada on constitutional issues.

Toronto lawyer Newton W. Rowell was also one of the most respected men in Canada, noted for his dedication to principle, dedication so strong he believed principle was more important than power, and in 1917 acted on principle knowing it would cost him his future in the Liberal Party, where he was a rising star.

It was the year of the Conscription Crisis. A federal election was coming. The country and the political parties were sharply divided on conscription. The Liberals, still headed by Sir Wilfrid Laurier, were bitterly opposed.



Prime Minister Borden believed it was necessary and sought support through a union government, including members of both parties. And one of the Liberals to whom he reached out was Newton W. Rowell, leader of the party in Ontario, and of the opposition in the legislature. The two men were often at odds but on the issue of conscription they were united, Mr. Rowell agreed to join Borden's cabinet.

Breaking with his party was painful, especially with his mentor Sir Wilfrid, who was 75, in failing health, and feeling that friends were deserting him. Laurier's vision of Canada in the 20th century had been an inspiration and always would be,

but Rowell believed he was obeying his duty as a citizen. Principle gave him no choice.

Other Prime Ministers would call on him. When he accepted the Persons Case he was leading the prosecution of breweries and distilleries which had been evading taxes, at the request of Mackenzie King.

In the depressed 1930s, R.B. Bennett would call on him when the Supreme Court was blocking legislation to introduce unemployment insurance, a national minimum wage and a limit on hours of work. Mr. Rowell could not persuade the judges the ideas were constitutional but the exchanges were very “Canadian.”

Across the border President Roosevelt was in open warfare with the U.S. Supreme Court, which was blocking “The New Deal” with its promise of social security. With the advantage of being re-elected three times, he had time to replace retiring judges with men who shared his vision. But Bennett wasn’t re-elected once and his ideas had to wait for a generation.

But the unsinkable Mr. King was back, in his third incarnation as Prime Minister, and asked Mr. Rowell to chair a Royal Commission on Dominion-Provincial Relations.

He was an important man who did important things—like co-founding the United Church of Canada, representing Canada at the first assembly of the League of Nations and touring the country speaking on behalf of the League.

Why would he be representing five female malcontents from the wilds of Alberta? As Sherlock Holmes is reputed to have said, though he never did, “Elementary, my dear Watson.”

They were kindred spirits. In Ontario he and his wife Nell had championed the same causes the Five had fought for in Alberta. And on “the drink question” his eloquence rivalled Nellie McClung’s: “Alcohol is a menace to democratic government. It dethrones reason, encourages crime, produces poverty, illness and death, and saps the moral fabric of the community.”

There was no rush to justice in the Person's Case. Administrative delays were inevitable, and Emily shouldn't have tried to expand the Senate question into a forum on the role of women.

Mr. King did the sporting thing and offered to pay Mr. Rowell's fee, which would be two thousand dollars.

But 1927 passed and 1928 was well underway before the Five were notified of their day in court. The Supreme Courthouse was less imposing than the fire hall/police station where the business all began, a former workshop used in construction of the Parliament Buildings.

Just minutes away, in the House of Commons, Agnes MacPhail was in her second term as MP, admitted by amending the Dominion Elections Act, but for the Senate that course was not on the table. Mr. King had shoved it firmly under the rug. Only an amendment to the British North America Act could swing open the doors of the Red Chamber.

The Famous Five's day in court would be literally one day, March fourteenth, 1928. It would be Emily's sixtieth birthday—she was forty-eight when it started—and that seemed a good omen. But other omens were less promising.

The government's response would be delivered by the Solicitor General, Lucien Cannon, who hadn't forgiven Mr. Rowell for leaving the Liberal party to join the Borden cabinet.

In addition, Quebec had been granted intervenor status and was seconding a powerful courtroom performer to protect its interests. Mackenzie King had tried to appoint Eugene Lafleur Chief Justice of the Supreme Court, but the honour was declined.

Quebec's Deputy Justice Minister offered an inkling of what to expect: "How could women who have entered married life, and thereby owed obedience to their husbands, exercise the powers of a Senator?"

The Supreme Court had six members then. Five would hear the arguments, which began with Mr. Cannon making clear what the session was about. It was not about

whether women could be worthy Senators, but whether the law permitted their appointment.

He restated the government's well-known position that the BNA Act stopped the clock at 1867. The Act was the constitution and it must be viewed in light of the time in which it was passed. Women weren't eligible then, so nothing had changed.

The Solicitor General took half the morning. Mr. Lafleur took the other half and came on with a sweeping declaration: "*Prime facie*, women are excluded from sitting as Senators." *Prima facie* being legalese for obviously.

No need to justify the statement—the obvious truth was against them. And so was the law. Not only the BNA Act but the common law which can be defined as:

"A system of law developed in England, based on court decisions, the principles implied in those decisions and customs and usages, rather than codified written laws."

Mr. Lafleur told the women the entire history of the common law was against them.

Which was interesting.

In Alberta, settling Persons Case One, Charles Stuart ruled that the common law was for them.

"If the common law rests on common sense, there is no bar to women in the public life of Alberta". Considering customs and usages Alberta was free to recognize new and changing conditions.

Prima facie the day would be much ado about words.

Mr. Lafleur and two associates went on for so long Mr. Rowell didn't get his turn till after lunch, with his focus on the words of the BNA Act, contending that "there is nothing in the Act to suggest the word *person* is limited to male persons." Government Side conceded the point.

The Act didn't ex-clude women from the Senate, but it didn't in-clude them either, which created an ambiguity. So there was debate about the significance of the word "ambiguous" in this context.

Mr. Rowell said it left open two courses of action. Parliament was free to choose either. But Government Side said that wouldn't do. Parliament couldn't presume to know the intentions of the Fathers of Confederation or of the British lawmakers who had voted on the Act at Westminster.

This led to a word game, as lawyers and judges sought historical precedents for deciding whether the word 'person' had a double meaning.

The quest went all the way back to Roman law, in which the Latin word *persona* was reserved for important officials, who were obviously men-only.

(Chief Justice Anglin would find this so relevant he would cite it in his judgement.)

Mr. Rowell then moved on to the words "public policy," defined as: "A plan or course of action adopted by a government to influence and determine decisions."

In the years since 1867 governments had revised policies to meet changing conditions (the customs and usages of the common law). He urged the court to consider the Persons Case from the viewpoint of current policies which drew derision from one of the judges and another sweeping declaration from Mr. Lafleur, who accused him of advocating revolutionary change.

On this note the judges retired to spend parts of the next six weeks weighing words from the Famous Five's day in court.

On to London

On the 20th of April the justices returned for the reading of the verdict in their robes of imperial red and flowing white fur. What would a five-year-old think of an elderly justice in full regalia?

Exactly.

Chief Justice Anglin read the judgement, conducting auditors along a trail of precedents, most from English courts, that women “lacked legal capacity to hold public office,” concluding that “women in office would be a departure from common law.”

Turning to the BNA Act he focused on the word ambiguity in the word person.

He dismissed Mr. Rowell’s contention that ambiguity implied choice. The Chief Justice would have none of that. He stood stubbornly on the line that ambiguity could not be resolved by political and social realities of 1928 but by the understandings of 1867.

Mackenzie King was perhaps the least theatrically inclined of all prime ministers but that afternoon he put on a show in Parliament. Through Justice Minister Lapointe he announced that the government would take immediate steps to seek an amendment to the constitution.

It sounded magnanimous but Mr. King was being duplicitous, in politician-speak, giving the ladies a song and dance. There were no steps to take, immediate or otherwise.

The authors hadn’t thought to put in a section on amending it, unlike the founders of the United States of America who wrote into their constitution that an amendment could be achieved by a two-thirds vote of both Congress and Senate, and ratification by three-quarters of the states.

It seems safe to state that Mr. King was taking immediate steps to steer the ladies away from appealing their loss to the Privy Council in London.

In 1928 the Supreme Court of Canada was not the end of the line.

The British Empire was being reconstructed with Britain and self-governing dominions - Canada, Australia, New Zealand and South Africa - forming a Commonwealth of equals.

When the process was complete Canada would manage all its affairs internally. Until then the highest legal authority would remain the Judicial Committee of the Privy Council in London.

Note: The technicalities of transition took longer than expected. Appeals of criminal trials ended in 1933, civil matters not till 1947.

Murphy and Co. were not lulled by Mr. King's performance.

On to London!

But they would have to wait for the world to go around the sun one more time.

At last, in June 1929, Mr. Rowell was in London ready to proceed, but he found that the Privy Councillors were not. They were busy with the aftermath of a general election in which the Labour Party unseated the ruling Conservatives.

He had to cable to appellants that their day in court was postponed till late July. The Committee had eight appeals from Canada, and theirs was number eight.

The delay was unwelcome but turned out to be time well spent. The incoming Labour government was appointing a new Lord Chancellor to preside over the Judicial Committee. John Sankey would hold a position of which there was no equivalent in Canada—combining the judicial with the political. As Chief Justice

he was also a member of cabinet, advisor on legal implications of government policy.

He had spent ten years in the political wilderness after proposing legislation too radical for the time.

In 1919 the British coal industry was beset with postwar economic realities and traditional animosities pitting Labour against Capital.

Sankey was asked to chair a commission which would bring the antagonists together in a common cause and achieve consensus on a future course for the coalfields. But the assignment was “Commission Impossible,” three owners on one side and, three miners on the other and Sankey caught in the middle.



Winston Churchill believed in the fewest possible number of the shortest possible words.

Sankey employed 26 words to convey the atmosphere: “It would be safe to say that the miners’ representatives were the stupidest men in England had we not frequent occasion to meet the owners.

He began his official report with 21 words which could stand alone as a quotation:

“Coal mining is our national key industry, upon which nearly all other industries depend.”

The key industry was mired in ill-will and mistrust. Sankey was a rising star, on course for the highest judicial post in the land, but the solution he proposed derailed his career: *Nationalize the mines and run them as a state industry.*

The idea came thirty years too soon. Conservatives were shocked. Labour was uneasy. He seemed “risky” for the responsibilities of Lord Chancellor, and eventually he decided he would never get it and should retire when he reached age sixty, which would be April 23rd 1929.

The poet Burns observed in the fewest possible words that the best-laid plans of mice and men gang aft agley. Not a bad thing in the career of John Sankey.

As the day for his well-planned departure approached there were signs that times were changing and catching up to him. This set in motion a sequence of seminal events in the chronicle of the Persons Case.

On April 23rd 1929 he did not retire.

On May 30th 1929 Labour won the general election.

On June 7th 1929 he was appointed Lord Chancellor.

On July 22nd 1929—13 years and 22 days after Harry Robertson raised the question, it came to the Judicial Committee of the Privy Council, Viscount Sankey presiding.

The question which was accorded one day of confrontation in Ottawa was granted four days of contemplation when it reached One Downing Street, London. The difference must have been agreeable to Mr. Rowell, who heard the five scholarly and neutral judges work their traditional unhurried way through all the points that would figure in their judgement.

The Persons Case then went behind closed doors. In Alberta the appellants waited... and waited... while the world travelled a quarter of the way on its annual

journey around the sun... watching the leaves turn from green to gold and then to dust... wondering what was happening at One Downing Street.

Now it can be told.

The Lord Chancellor was constructing sentences—in the fewest possible number of the most expressive possible words.

While Winston Churchill played the English language like a bass drum, John Sankey played the language like a piano—a fine old piano in a Victorian drawing room. In 21 words he informed Canada's top jurists and political masters that "Appeals to Roman law and early English decisions are an insecure foundation on which to build an interpretation of the British North America Act."

He then packed five vivid images into 26 words to inform the colonials that interpretation must move with the times:

"The British North America Act planted in Canada a living tree, capable of growth and expansion within its natural limits."

He concludes his judgment with 64 of the fewest possible words in a single sentence. (Brackets are for clarification).

"Their Lordships (the Privy Councillors) have come to the conclusion that the word person in Section 24 includes members of both the male and female sex, and therefore the question propounded by the Governor General (of Canada) should be answered in the affirmative, and that women are eligible to be summoned to and become members of, the Senate of Canada, and they (the councillors) will humbly advise His Majesty accordingly."

On the morning of October 19th 1929 he is paraded to the Royal Courts of Justice—where he will read these words.



He has a glance for a photographer but his attendants are more lordly than His Lordship. There is an eloquence to their demeanour, to inform the crowd of their importance.

The man in the lead is saying:

“I bear the official mace of the Privy Council, which asserts its storied past and current primacy over all courts where the Union Jack is flown—including the Supreme Court of Canada.

The next man is saying “I hold the green bag marked with the lion and the unicorn, serving notice that the authority of the Privy Council comes from the King.

“The decision is in the bag. It will rattle windows in Canada, let me tell you.”

The last man is saying:

“My role is more important than you might think. Keeping pace with the Lord Chancellor, holding his robe a precise number of inches above paving stones is an art. One false move can reduce pomp and circumstance to music hall comedy.”

If it's ten o'clock in the morning in London, seven time zones ahead in Edmonton it will be three o'clock.



At 11011 – 88th Avenue, Emily Murphy, husband Arthur and daughter Evelyn are resting in peace. (Perhaps there's a better way to put it). They have no consciousness of the drama in London.

But do the windows rattle when Canada is booted into the twentieth century by the Mother Country? And does the lamp above the dining room table sway for the words: Women are eligible to be summoned to and become members of the Senate of Canada?

The Murphys slumber on. Then, at four o'clock in the morning the doorbell rings. When this happens in the middle of the night it usually means somebody wants to tell you your house is on fire. Emily is first to the door. She finds that the house is not in danger but there's another cause for alarm. A young man is standing there with a telegram.

Telegrams bring bad news. But this is a cablegram from London.

The house echoes with shouts of "We've won! We've won!"

They've won the argument over the Senate, cause for jubilation.

But it's only the beginning. There will be more to celebrate, much more, when the unintended consequences of their campaign become clear. Unintended consequences can create a problem equal in size to the problem solved, but the Persons Case is a magnificent exception.

The unintended consequences are bonuses--for all women of Canada and the country itself.

Lord Sankey says the word person in Section 24 of the BNA Act includes women. But that's not all. The word appears thirteen times and wherever it does the rule applies.

There's a bigger unintended consequence. His poet's vision of a living tree planted by the BNA Act liberates Canada from attitudes of 1867.

The last word in a case of which Canadian history is made in London, a case legal, political, sociological and etymological, a study in pettiness, a study in persistence, in one respect about nothing, in another about everything.

More than a story it's a tale, a Canadian classic.

It would seem a natural for the media, which is roughly 99 percent print and one percent radio.

But no investigative reporter or magazine writer follows it up.

The Persons Case fades into long-term misunderstanding of what it was about.

Events of historic significance may not be recognized in their day.

Lord Sankey set history in motion but thirty years would pass before women achieved a presence in the public life of the country, and another thirty in the corporate life.

With the advantage of being born in Edmonton in 1923 I can testify to the two enduring perceptions of the Persons Case.

ONE: It made women persons.

TWO: No, it did not. Cranky letters informed newspaper editors that women had always been persons and always would be without benefit of the Persons Case.

Epilogue

It would have been different if Mr. King had appointed Emily to the Senate, as many expected, but the prospect of “Janey Canuck” hard-hitting journalist in the Red Chamber would not fill his heart with joy and gladness.

She would be a constant reminder that Lord Sankey declared women eligible for any public office in Canada, and in the process awarded dunce caps to the Prime Minister and Chief Justice. The appointment went to a party worker from Ontario.

And it would have been different if Emily had lived longer. She died in her sleep in October 1933, after a typical vigorous day--in the morning she was downtown--shopping, looking up things in the Library, calling on the folks at the police station.

She had retired from the bench but liked to catch up on the gossip. Late afternoon was spent with a granddaughter.

In the evening while husband Arthur was out at a basketball game, she was writing, in longhand. All her published words came literally from the pen of Emily Murphy. The shelves which lined the walls of her bedroom held neat stacks of work-completed and work-in-progress. She had just written 60,000 words on the issue of birth control.

It is inconceivable that her pen would have lain mute if she'd had time to realize that the true results of the Persons Case were being clouded by misunderstanding.

The Macmillan publishing house commissioned Byrne Hope Sanders to explore the contents of the shelves for a biography. In the introduction to Emily Murphy Crusader Ms. Sanders wrote:

She kept a record for history... in her careful habit of filing important letters... her diary-like continuity of writing... her dramatization of highlights throughout her lifetime, in words published and unpublished.

There were gems among the unpublished--from her adventures in Vancouver drug dens with police patrols to her encounters with dispossed Alberta farm women which sparked an eight-year campaign for a Dower Act.

The shelves offered a mass of material for the book Emily would have written about The Persons Case. In Ms. Sander's biography the case became a chapter of a life story.

When the book appeared in 1945 it was well-received but made little impact on perception of the case. Forty years later the Canadian Encyclopedia would make references to it but didn't attempt a history.

In 1997, when director Frank Glenfield and I were building a show for the Edmonton Fringe Theatre Festival--to be known as Women Are Persons It's the Law--our chief resource was Emily Murphy Crusader.

Another welcome resource was Judge Marjorie Bowker with her expertise on the provincial case. A third source was local knowledge. In a young city of strong, quiet personalities, Emily stood out.

As the world turned, at this point in history, the other planets were aligning for a wave of appreciation in memory of the Famous Five.

The government of Alberta commissioned portraits to hang in the Legislature.

The City of Edmonton conferred famous names on a chain of parks along the river.

The Famous Five Foundation was created, thinking in terms of statues, a scene in bronze, five female figures interacting as Emily Murphy reads a newspaper with the headline WOMEN ARE PERSONS... in both official languages.

Barbara Paterson, who sculpted Emily Carr for the Empress Hotel in Victoria, was commissioned to create the scene.

On October 18th, 1999, the seventieth anniversary of Lord Sankey's parade to the Royal Courts of Justice, the figures were unveiled in a park facing Calgary City Hall.

A year later to the day a duplicate scene appeared in Ottawa, on the grounds of the Parliament Buildings. Among the spectators there could have been 35 women Senators and 62 Members of Parliament, eleven in cabinet, taking their place in the public life of the country, the legacy of the Persons Case.

The Bank of Canada was next to honour the Famous Five, placing them on the back of the 50-dollar bill. It's unlikely that anyone at the bank understood the delightful irony.

Mackenzie King was on the front of the bill. Mr. King looks uncomfortable in his official portrait. If paper money was real life, having Edwards et al. celebrating at his back door could not have been comforting.

After six years the governor of the Bank would remove the Famous Five and replace them with an arctic ice-breaker named for a Norwegian explorer. In responding to the public outcry over the new bills, Governor Carney issued a press release that indicated "Our bank notes belong to all Canadians, and the work we do at the Bank is for all Canadians."

The Famous Five needed a book—THE BOOK—you might call it a "tell-all" book, a project too big for a publisher whose survival depended on sales.

Somebody—or some body—would have to come forward with resources to employ a force of specialist researchers and commission writers with credentials to guarantee acceptance.

And a body did come forward—the Osgoode Society for Canadian Legal History, founded in 1979, named for William Osgoode, first Chief Justice of Upper Canada. The credentials of Robert J. Sharpe and Patricia I. McMahon may be verified on-

line. The book appeared in 2007, named—in the fewest possible number of the shortest possible words—THE PERSONS CASE.

Their book is exceptionally readable, bringing to life the tangle of legalities and the personalities—the Famous Five and three of their champions: Charles Stuart, Newton W. Rowell and the last-man-in, the intriguing John Sankey.

THE BOOK offers a smorgasbord of easily-digestible information for people who would like to know about, or think they ought to know about, or are simply curious about The Persons Case.

It tells an odd story which has to be true because no one could make it up—about a simple question: “Is a woman a person eligible to hold public office?”—which hung unresolved for 4,767 days, till an English judge rode in from the wilderness to write the final chapter.



THE ALBERTA ORDER OF EXCELLENCE



Tony Cashman, CD served in the Second World War before becoming one of Alberta's most respected historians and storytellers.

Tony Cashman is a celebrated historian, storyteller and playwright. He was born in Edmonton on April 29, 1923, the son of John Walcott Cashman, a mining engineer, and Helen Gorman, a teacher.

Tony's father served in the First World War. Returning to Canada, he installed electric tramways in mining areas such as Idaho, Montana and abroad. The family lived across the United States from 1927 to 1934. In 1934, Tony's father died and the family moved back to Edmonton, and Tony entered grade seven at Grandin School.

Tony was in awe of his uncle George Gorman, a pilot in the First World War and one of Edmonton's first bush pilots. When another war came, Tony served as a navigator in Bomber Command, participating in 30 missions over Germany.

Tony later attended Notre Dame University in South Bend, Indiana before returning to Edmonton. He worked in radio through the 1950s and 1960s as an outside reporter for CJCA and program director for CKUA.

In 1950, he produced a story about beavers relocated to the Athabasca River. This led to one-minute commercial vignettes and in 1951, to a 10-minute program, *The Edmonton Story*, which ran for 10 years.

Tony has written many histories over the years, including *Vice-Regal Cowboy* (1957), about the life of J. J. Bowlen, Lieutenant Governor of Alberta, *Heritage of Service: The History of Nursing in Alberta* (1966), *A Picture History of Alberta* (1979) to celebrate the 75th anniversary of the province and *When Edmonton Was Young* (2009).

In 1970, Tony became company historian for Alberta Government Telephones and curator of their telephone museum. He wrote *Singing Wires: The Telephone in Alberta* (1972), along with a book for children illustrated by popular local cartoonist Yardley Jones.

Retirement in 1983 allowed Tony and his wife Genevieve ("Veva") Mary Costello to spend weeks at Jasper Park Lodge bringing the history of western Canada to life with a multi-media show. In 1994, during discussions with legendary director Frank Glenfield, Tony realized that the Edmonton Fringe Theatre Festival did not include any historical plays. He wrote a play in which Emily Murphy reads from her own works, and his peers encouraged him to write plays about Nellie McClung and Irene Parlby. To mark Canadian History Week 2014 at the Provincial Archives of Alberta, these were expanded to a multi-media show called *Women Are Persons – It's The Law*.

Tony continues playwriting for The Fringe. His most recent play, *Emily Carr and Victoria: Growing Up Together* premiered at the 2011 festival and then travelled to Vancouver Island in 2012. He continues to create his manuscripts using the 1924 Underwood typewriter his mother purchased second-hand in 1935.

Tony has been honoured many times, including receiving the Edmonton Historical Board Historical Recognition award in 1975, induction into Edmonton's Cultural Hall of Fame in 1999, being recognized as Edmontonian of the Century in 2004 and receiving the Historical Society of Alberta annual award in 2010. In 2011, a new neighbourhood in Edmonton was named after him. ●